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June 5, 2001

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Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, NW  
Washington, D.C.

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JUN 7 - 2001  
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Re: Permitted Ex Parte Communication, CS Dkt. No. 00-2

Dear Ms. Salas:

In a Petition for Reconsideration filed December 13, 2000 and in a Reply to Oppositions filed February 8, 2001, the National Basketball Association, National Hockey League, National Football League, and the Office of the Commissioner of Baseball (collectively "the Leagues") made a showing of how the adoption of new Section 76.128 caused an inadvertent change in the scope of new Section 76.111 (from the old version of Section 76.67), resulting in a decrease in the protection offered by the rule.

Section 76.128 no longer includes a priority in signals to determine which stations must be blacked out -- as contrasted with Section 76.67 -- and therefore would no longer require the blackout of a Grade B signal of the visiting team's telecaster in the home team's 35-mile Specified Zone. The limited protection of Section 76.67 would be further reduced by this action, providing cable operators with the opportunity to carry telecasts never authorized previously.

In a meeting with Commission staff on March 15, 2001, the Leagues agreed to provide a showing of the numbers of times in the most recent seasons of the Leagues in which there would have been blackout situations under the former rule (Section 76.67), but not under the new rule (Section 76.111). The Leagues filed a letter with the Commission on April 6, 2001 which showed that, among all 120 professional teams playing in the four major sports in 2000-2001, 18 telecasts in six markets would have been affected under the new rule. (In addition, five National Football

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League games would have been affected, but because the games were televised in the home market, no cable blackout would have been required.)

In a meeting on May 17, 2001, the staff of the Cable Services Bureau made a further request that the Leagues indicate which specific cable systems covered by the April 6 letter would have been required to institute a blackout under former Section 76.67. (In responding, the Leagues have relied on signal carriage information in the 2001 Edition of Warren's Television and Cable Factbook.)

The April 6 letter had identified the following markets which would have been affected during the 2000-2001 seasons:

**(a) New York (9 games)**

Under Section 76.67, the New York Rangers, New York Islanders, and New Jersey Devils were able to request Section 76.67 blackout protection for only four of the games that were televised by **WPSG-TV**, Philadelphia, and the New York Yankees and the New York Mets were able to request such protection for only three of the WPSG-TV telecasts. WPSG-TV is carried as a Grade B local signal by a number of cable systems within the New York Specified Zone – East Windsor, NJ (54,830 subscribers), Lambertville, NJ (7,070 subscribers) and Trenton, NJ (42,937 subscribers). Thus, under the rule change discussed above, the New York National Hockey League and Major League Baseball teams would lose all of their Section 76.67 protection against WPSG-TV telecasts on cable systems serving more than 100,000 subscribers.

Likewise, the New York Yankees would lose all of their Section 76.67 protection against two telecasts on **WTXX-TV**, Waterbury, CT on the Norwalk, CT system (109,809 subscribers), which serves a number of communities in the New York Specified Zone.

**(b) Chicago (4 games)**

Two National Basketball Association games between the Milwaukee Bucks and the Chicago Bulls and two Major League Baseball games between the Milwaukee Brewers and the Chicago teams were televised by **WCGV-TV**, Milwaukee. It appears no systems within the Chicago Specified Zone carry WCGV-TV.

**(c) Milwaukee (2 games)**

One National Basketball Association game between the Chicago Bulls and Milwaukee Bucks and one Major League Baseball game between the Chicago Cubs and Milwaukee Brewers were televised by **WGN-TV**, Chicago. It appears that a portion of the Kenosha-Racine, WI (97,000 subscribers) system, within the Milwaukee Specified Zone, carries WGN-TV as a local signal and would have been required to blackout those games.

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As with the situation in New York, the limited protection offered to the Milwaukee Bucks and Milwaukee Brewers by Section 76.67 would be further reduced in allowing this type of carriage – Grade B signals having equal priority in the home team's Specified Zone. The Kenosha-Racine cable system, with nearly 100,000 subscribers, would now be given permission to carry additional telecasts unpermitted in the past.

(d) **San Diego (1 game)**

One Major League Baseball game between the Anaheim Angels and the San Diego Padres was televised by **KCAL-TV**, Los Angeles. It appears no systems within the San Diego Specified Zone carry KCAL-TV.

(e) **Baltimore (1 game)**

One Major League Baseball game between the Philadelphia Phillies and the Baltimore Orioles was televised by **WPSG-TV**, Philadelphia. It appears no systems within the Baltimore Specified Zone carry WPSG-TV.

(f) **Cincinnati (1 game)**

One Major League Baseball game between the Cleveland Indians and the Cincinnati Reds was televised by **WWHO-TV**, Chillicothe. It appears no systems within the Cincinnati Specified Zone carry WWHO-TV.

(The Commission should note that the above analysis looks only at games affected during the 2000-2001 seasons for the Leagues. It is possible that schedules of teams or schedules of telecasts for succeeding seasons could present different factual settings.)


In addition to the specific circumstances of carriage identified in the April 6 letter, there well may be additional situations where teams would lose protection under the rule change, such as where cable systems would carry telecasts carried pursuant to the substitution provisions of Section 76.161.

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It is quite apparent from the above that the circumstances continue to exist where former Section 76.67 would have required blackouts, but pursuant to changes in the rules, the terms of Sections 76.111 and 76.128 do not. This inadvertent change in the rules should be corrected.<sup>1</sup>

Should you have any questions, please communicate directly with the undersigned.

Sincerely,

  
Philip R. Hochberg

cc: William Johnson, Esq.  
Eloise Gore, Esq.  
Ronald Parver, Esq.

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<sup>1</sup> The Leagues further note that a change – designed or inadvertent -- by the Commission in its sports program exclusivity regulations will trigger a rate adjustment proceeding by the Copyright Office, pursuant to 17 U.S.C. Section 801(b)(2)(C).